

J.L.M. Inc. d/b/a Sheraton Hotel Waterbury and Local 217, Hotel and Restaurant Employees and Bartenders Union, AFL-CIO. Cases 34-CA-4535, 34-CA-4628, 34-CA-4749, 34-CA-4800-2, and 34-RC-936

January 31, 1995

**SUPPLEMENTAL DECISION, ORDER, AND
DIRECTION OF SECOND ELECTION**

**BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE**

On September 23, 1993, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,¹ finding that the Respondent Employer violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act and ordering as part of the remedy that the Respondent bargain on request with the Union as the exclusive representative of the employees in the appropriate unit. In Case 34-RC-936, the Board sustained certain objections, and set aside the results of an election held on January 25, 1990.

Thereafter, the Respondent petitioned the United States Court of Appeals for the Second Circuit to review the Board's Order, and the Board filed a cross-application for enforcement. On August 3, 1994, the court issued its opinion² in which it granted in part and denied in part enforcement of the Board's Order and remanded the case to the Board for further proceedings.³ Specifically, the court enforced the Board's Order with respect to each of the violation findings, but found that a bargaining order was not an appropriate remedy and therefore denied enforcement of that portion of the Board's Order. The court remanded the case to the Board to determine whether a second election is appropriate.

¹ 312 NLRB 304.

² 31 F.3d 79.

³ 31 F.3d at 85.

On November 29, 1994, the Board advised the parties that it would reconsider the case in conformity with the court's remand and invited the parties to file statements of position. The General Counsel and the Respondent filed statements, in which the General Counsel requested the Board to direct a second election and the Respondent opposed a second election.

The Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record, including the parties' statements of position, in light of the court's decision. The Board has decided to accept the court's decision as the law of the case. Accordingly, the Board now regards the sole issue for determination before it to be whether to direct a second election.

We find that the question of the representation of the employees raised by the Union's petition in Case 34-RC-936 is unresolved, and we shall give the employees an opportunity to decide that question by means of a second election. We reject the Respondent's arguments that conducting a new election would contravene the purposes of the Act because of the lapse of time since the petition was filed and turnover of employees. *Chester Valley, Inc.*, 266 NLRB 480 (1983). We also reject the Respondent's contention that a current showing of interest is required. *Provincial House, Inc.*, 236 NLRB 926 (1978). The results of the election will reveal the desires of the present employees as to representation by the Union.

ORDER

It is ordered that the petition in Case 34-RC-936 be reinstated, and that Case 34-RC-936 be severed and remanded to the Regional Director for Region 34 for the purpose of conducting a second election as directed below.

[Direction of Second Election omitted from publication.]